

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 35037(b)

Specific Purpose:

Changes to FC sections 8712(d), 8811(d) and 8908(d) have created new fee mandates. Information on fees is now contained in Subsection (d) of all three code sections.

Factual Basis:

Changes are necessary for purposes of accuracy.

Section 35037(b)(1) is being renumbered from Section 35037(b)(4)

Specific Purpose/Factual Basis:

Section 35037(b)(4) is being renumbered to Subsection (b)(1) for clarify and consistency.

Sections 35181(b)(12) and (b)(13)

Specific Purpose:

Subsection (b)(12) is amended to delete the reference to Section 35184(e). The sentence is reworded for clarity. It is necessary to modify subsection (b)(13) to reflect the new requirements in the law for criminal background checks.

Factual Basis:

The changes to Subsection (b)(12) avoid unnecessarily referencing of regulation sections, yet retains the general requirement that the FBI criminal record check from the Department of Justice (DOJ) is a requirement for a background investigation.

Subsection (b)(13) is being amended to reflect the federal requirements in the Adam Walsh Child Protection & Safety Act of 2006, Public Law (PL) 109-248.

Section 35183(c) and (c)(9)

Specific Purpose

Subsection (9) is modified to delete a reference to another regulation section that is modified by these regulations. The subsequent arrest information is addressed in another part of the regulations.

Factual Basis:

It is necessary to modify section 35183(c) for clarity.

Section 35183(c)(10)

Specific Purpose

Subsection (c)(10) is adopted to reflect the new requirements in the law for criminal background checks.

Factual Basis

This section is necessary to reflect the federal requirements in the Adam Walsh Child Protection & Safety Act, PL 109-248.

Sections 35183 (c)(11)-(14) are renumbered from Sections (c)(10)-(13)

Specific Purpose/Factual Basis

All of these sections were renumbered for clarity because of the addition of the new Subsection (c)(10). Prior subsections (c)(10-13) are renumbered to (c)(11-14) for consistency.

Section 35184(a)

Specific Purpose:

This section amends existing language to include extended background checks to ensure safety in child adoptions.

Factual Basis:

This amendment is necessary to emphasize to adoption workers the necessity of completing a criminal background check and the social worker's duty to investigate all prior arrests at the federal and state levels and, according to FC sections 8712(c)(1)(A) or (B), a home study will be denied and adoptive placement will not be granted. This is

added to emphasize the necessity for safety in child adoptions. A typographical error in the first sentence is corrected for clarity.

Handbook Sections 35184(a)(1) and (2)

Specific Purpose:

These sections of Handbook are amended to strike out old statutory language and cite the relevant part of FC section 8712 to ensure that adoption workers and the public have easy access to the actual text contained in the statute. In addition, the outline format is being eliminated.

Factual Basis:

The new language is necessary to comply with and clarify amendments to FC section 8712 contained in Assembly Bill (AB) 340, Chapter 464, Statutes of 2007. It has been found that the outline format for the Handbook may cause confusion because the Handbook is not printed in the Westlaw's CCR's; therefore, the outline is eliminated.

Current Section 35184(b)

Specific Purpose:

The existing Subsection (b) is repealed.

Factual Basis:

Section 35184(b) is repealed because it is overbroad. Under current law, clearances cannot be shared with unauthorized persons (Penal Code section 11142).

New Section 35184(b) is renumbered from Current Section 35184(c)

Specific Purpose:

Section 35184(c) is changed to Section 35184(b).

Factual Basis:

With the repeal of Current Section 35184(b), it is necessary to renumber current Section 35184(c) to new Section 35184(b) for clarity and consistency. The word "state" is added to reflect that agencies can be either state or county.

New Section 35184(c)

Specific Purpose:

New Section 35184(c) is adopted to advise adoption workers and the public that applicants and adults residing with applicants cannot be approved for adoptive placement if they have certain felony convictions in the preceding five years.

Factual Basis:

The new language in the Section 35184(c) is necessary to comply with AB 2651 (Chapter 701, Statutes of 2008), which adopted stricter prohibitions in FC section 8712 applicable to prospective adoptive parents to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

New Section 35184(d)

Specific Purpose:

This section is adopted to inform the adoption worker of what actions are to be taken if an applicant or household member has a conviction other than a minor traffic application. The intent of adding this section is to provide the worker with important details if there is a criminal record that requires investigation.

Factual Basis:

This amendment is necessary to mirror current practice contained in Health and Safety Code section 1522(a)(1). It is necessary for adoption to ensure the safety of children.

Current Handbook Sections 35184(c)(1)(A)-(F)

Specific Purpose:

To remove sections from Handbook which are outdated processes and replace them with accurate information. It also removes the outline format.

Factual Basis:

It is necessary to remove these sections because BID-7 forms are no longer in existence and the addresses and processes in Handbook Sections 35184(c)(1)(A) through (F) are no longer used by the DOJ.

New Handbook Section 35184(d)

Specific Purpose:

To adopt new language to update DOJ fingerprinting procedures.

Factual Basis:

The new handbook is necessary to comply with AB 2651 (Chapter 701, Statutes of 2008), which added out of state child abuse and neglect registry checks as part of the background investigation for applicants. These new requirements are part of the federal Adam Walsh Child Protection & Safety Act of 2006.

New language is also adopted to update the DOJ fingerprinting procedures for applicants with disabilities. (See Attorney General's Information Bulletin at http://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/08-05-BCII.pdf.)

New Sections 35184(e) and (e)(1) are being renumbered from Current Sections 35184(d) and (d)(1)

Specific Purpose/Factual Basis:

The section is renumbered from Current Section 35184(d) to New Section 35184(e) for consistency, as New Section 35184(d) was adopted. The new language adopted is modified to reflect current practice and to eliminate a reference to the Bureau of Criminal Identification, which no longer exists.

New Handbook Section 35184(e)(1) is being renumbered from Current Handbook Section 35184(d)(1)

Specific Purpose/Factual Basis:

The handbook section is renumbered from 35184(d)(1) to 35184(e)(1) for consistency. Also, the specific purpose/factual basis of this section are to remove an older citation and definition and replace it with an accurate citation to the relevant Penal Code (PC) section. It also eliminates the outline format for the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

New Section 35184(e)(2) is being renumbered from Current Section 35184(d)(2)

Specific Purpose/Factual Basis:

The section is renumbered from 35184(d)(2) to 35184(e)(2) for consistency. Also, the word "active" has been deleted from the end of the sentence for clarity. It is redundant and unnecessary.

New Handbook Section 35184(e)(2) renumbered from Current Handbook
Section 35184(d)(2)

Specific Purpose/Factual Basis:

This section is modified to reflect the updated form number, form name and the electronic link to the new form. It also eliminates the outline format for the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

New Section 35184(f) is renumbered from Current Section 35184(e)

Specific Purpose/Factual Basis:

This section is renumbered to (f) for consistency. The language that is stricken is no longer a correct law. The language in this section is modified to reflect the current law.

New Handbook Section 35184(f) is renumbered from Current Handbook
Section 35184(e)

Specific Purpose:

This handbook section is renumbered to (f) for consistency. This handbook section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the outline format for the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

Factual Basis:

The amended language is necessary to reflect current practices and procedures for Live Scan submittals which are done electronically.

New Section 35184(g) is renumbered from Current Section 35184(D)

Specific Purpose/Factual Basis:

This section is renumbered from (D) to (g) to reflect the changes within Section 35184 and to maintain consistency in the section and to adopt the word "electronic," as new fingerprinting procedures are electronically updated.

Section 35269(a)(5)

Specific Purpose:

The language is amended to reflect that applicant documentation must also include federal information.

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Section 35269(a)(5)(A)

Specific Purpose/Factual Basis:

The handbook section is deleted to remove redundant information already contained in statute. In addition, handbook may cause confusion as it is not printed in the Westlaw's CCRs.

Section 35269(a)(5)(B) and 35269(a)(5)(B)1

Specific Purpose:

Sections 35269(a)(5)(B) and 35269(a)(5)(B)1 are deleted and relevant language moved to Sections 35270(c) and 35270(c)1.

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Section 35269(a)(5)(B)(2) through 35269(a)(5)(B)(6)

Specific Purpose/Factual Basis:

This section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

Section 35269(a)(5)(C)

Specific Purpose:

Section 35269(a)(5)(C) is deleted and its relevant language moved to Section 35270(d).

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Section 35269(a)(5)(C)(1)

Specific Purpose/Factual Basis:

This section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs. Relevant language is moved to Handbook section 35270(d).

Section 35269(a)(5)(D)

Specific Purpose:

Section 35269(a)(5)(D) is deleted and the relevant language moved to 35270(e).

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Sections 35269(a)(5)(D)1. and 2.

Specific Purpose/Factual Basis:

This section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

Section 35269(a)(5)(E)

Specific Purpose:

Section 35269(a)(5)(E) is deleted and the relevant language moved to 35270(f).

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Section 35269(a)(6)(A)

Specific Purpose:

Section 35269(a)(6)(A) is removed.

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Section 35269(a)(6)(B)

Specific Purpose/Factual Basis:

This section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

Section 35269(a)(6)(C)(1) to (3)

Specific Purpose:

Section 35269(a)(6)(C) is removed.

Factual Basis:

The language is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Sections 35269(a)(6)(C)(4) and (5)

Specific Purpose/Factual Basis:

This section is amended to delete out of date practices, addresses, processes and procedures which are no longer current. It also eliminates the Handbook because it may cause confusion, as the Handbook is not printed in the Westlaw's CCRs.

Section 35269(a)(6)(D)

Specific Purpose:

Section 35269(a)(6)(D) is deleted and the relevant language moved to 35270(f).

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Section 35270

Specific Purpose:

This section was adopted to update the background check requirements.

Factual Basis:

This section conforms with Section 35184(a), Criminal Background Check of Applicants in Agency Adoptions for purposes of consistency.

Section 35270(a)

Specific Purpose:

This introductory section is adopted to emphasize the requirement of criminal background checks for intercountry adoptions.

Factual Basis:

The amendment is necessary to comply with the federal Adam Walsh Child Protection & Safety Act of 2006.

Handbook Section 35270(a)

Specific Purpose

The purpose of the revised section is to update the practices in background checks. Handbook cites the relevant parts of FC section 8908 for clarity. This is necessary to ensure that adoption workers and the public have easy access to the actual text contained in the statute to facilitate compliance. Electronic links for fingerprinting instructions are provided for clarity and to access Live Scan.

Factual Basis:

This amendment is necessary to update all of the procedures for fingerprinting and background checks have changed and require updating in the regulations.

Section 35270(b)

Specific Purpose:

This section is adopted to reflect the changes in federal law requiring further background checks if the applicant has lived out of state in the preceding five years.

Factual Basis:

Adoption of this section is necessary to comply with AB 2651, (Chapter 701, Statutes of 2008), which amended H&S Code section 1522.1 to comply with the requirements of The Adam Walsh Child Protection & Safety Act of 2006, (PL 109-248).

Handbook Section 35270(b)

Specific Purpose:

This section details what specific additional background checks must be performed to comply with federal law when the applicant has not lived in the state continuously for five years.

Factual Basis

Adoption of this section is necessary to comply with AB 2651, (Chapter 701, Statutes of 2008), which amended H&S Code section 1522.1 to comply with the requirements of The Adam Walsh Child Protection & Safety Act of 2006, (PL 109-248).

Section 35270(c) and 35270(c)1 are renumbered from Sections 35269(a)(5)(B) and 35269(a)(5)(B)1.

Specific Purpose/Factual Basis:

This section is renumbered from 35269(a)(5)(B) and (a)(5)(B)1 to move the information to the new Section 35270. A reference to electronic fingerprint submission was added to update the regulation.

Handbook Section 35270(d) are renumbered from Handbook Section 35269(a)(5)(C) and 35269(a)(5)(C)1.

Specific Purpose/Factual Basis:

This section is renumbered from Handbook sections 35269(a)(5)(C) and 35269(a)(5)(C)1 to Handbook section 35270(d). The only difference is in the text for the Handbook section. The form number has been added and the electronic link to access the form on the internet. These changes update the background check process.

Handbook Section 35270(e) are renumbered from Handbook Sections 35269 (a)(5)(D) and 35269(a)(5)(D)1.

Specific Purpose/Factual Basis:

This section is renumbered from Handbook section 35269(a)(5)(D) to Handbook section 35270(e). The purpose is to move the information into the new section. Changes are the

correction of the PC citation in Section 35270(e) and the addition of the form number and the electronic link to access the form electronically. The old address and citation for DOJ was eliminated from Handbook section 35629(a)(5)(D)1. for accuracy.

Section 35270(f) renumbered from 35269(a)(6)(D)

Specific Purpose/Factual Basis

This section is renumbered from 35269(a)(6)(D) to 35270(f). The purpose is to move the information into the new Section 35270. The word order and usage has been slightly altered, but not the content.

At the end of the section are the legal citations from 35269 with the addition of the Adam Walsh Child Protection and Safety Act and H&S Code section 1522.1.

Section 35271(a)(2)(G)

Specific Purpose/Factual Basis:

This section was amended to reflect an obsolete section reference and for grammatical cleanup.

Section 35273(a)(3)

This section was amended to correct a typographical error and to reflect the name change to the Adoptions Services Bureau.

Specific Purpose/Factual Basis:

This section is corrected for accuracy.

Section 35273(b)(1)

This section was deleted because it references an obsolete regulation section.

Specific Purpose/Factual Basis

The Section 35273(b)(1) no longer exists. Removing it increases the accuracy of the regulations.

b) Identification of Documents Upon Which Department Is Relying

SB 703 (Chapter 583, Statutes of 2007)

AB 2651 (Chapter 701, Statutes of 2008)

The PL 109-248, the Adam Walsh Child Protection and Safety Act of 2006,
42 United States Code section 16911 et. seq.

c) Local Mandate Statement

These regulations do not impose a mandate upon local agencies or school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the GC because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

d) Statement of Alternatives Considered

The California Department of Social Services (CDSS) must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because current law requires adoption agency personnel to perform criminal background checks on all applicants to adopt.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Current law requires adoption agency personnel to perform criminal background checks on applicants to adopt; therefore, the number of adoption agency personnel should not fluctuate. As a result, CDSS has determined that these regulations do not have an impact on the creation or elimination of jobs in the State of California.

The duration of the criminal background check process will not be impacted. Adoption agency personnel have been implementing PL 109-248 for the past seven years pursuant to the Department's issuance of ACL # 08-49 (SB 703). No adoption agencies have been eliminated as a result.

Accordingly, adoption agencies will not expand nor will new agencies be created as a result of these regulations changes. Therefore, CDSS has determined that these regulations do not have an impact on businesses.

The benefits of the regulatory action are primarily greater safeguards for the health and welfare of California's foster children.

The following documents were relied upon in proposing the regulatory action:

SB 703 (Chapter 583, Statutes of 2007)

AB 2651 (Chapter 701, Statutes of 2008)

The PL 109-248, the Adam Walsh Child Protection and Safety Act of 2006,
42 United States Code section 16911 et. seq.

g) Benefits Anticipated from Regulatory Action

The additional background checks mandated by the new law will provide greater protection for the health and safety of California's foster children.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on December 17, 2014 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from October 31, 2014 to 5:00 p.m. December 17, 2014:

1. Comment:

The San Bernardino County Children and Family Services (CFS) expressed concern that the background check for prospective adoptive ("forever") parents who have lived out of state only goes back five years. Therefore, CFS recommends the regulation state that the background check is required for all prospective adoptive parents who have ever lived out of state, thereby, dropping the five-year cut-off.

Response:

This comment is well taken; however, our regulations are consistent with The Adam Walsh Act (P.L. 109-248), which also requires a check of state child abuse

and neglect registry(s) for all adults living in prospective adoptive homes. These checks must be conducted in every state in which each individual lived during the previous five years.

2. Comment:

The San Diego Health and Human Services Agency suggests that the term "licensed adoption agency" is an incorrect conference in New Sections 35270 and 35270(b).

Response:

This new section states "licensed adoption agency" because it pertains to intercountry adoption, which can only be handled by a licensed private adoption agency.

j) 15-Day Renotice Statement

The CDSS did not renote these regulations because no changes requiring renote were made to the regulations following the public hearing.